IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI JUSTICE S.ANANDA REDDY
WRIT PETITION NO : 3003 of 1997

Between:
R. Bramma Chary s/o Ramachandraiah
Miyapur, Hyderabad.

..... PETITIONER

AND

1 Vice Chairman-cum-Managing Director, A.P.S.R.T.C.,
Musheerabad, Hyderabad.
2 Deputy Chief Personnel Manager, APSRTC.,
Hyderabad Zone, Hydeabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any writ, order or direction particularly a writ in the nature of Mandamus declare the action of the respondent as arbitrary, and direct the respondents to set right the pay anomaly of the petitioner on part with the juniors together with all arrears of pay which are due to the petitioner with effect from the date it was extended to the juniors to the petitioner with all consequential and attendant benefits by quashing the Circular No.PD-113/90, dt. 6-10-1990 and consequential impugned proceedings No. P2.544(9)/96-PO(iv), dt.10-12-1996 of the 1st respondent.

Counsel for the Petitioner: DR.P.B.Vijay Kumar

Counsel for the Respondent Nos.1 & 2: MR.V.T.M.Prasad

The Court made the following :

ORDER:

This writ petition is filed by the petitioner aggrieved by the proceedings dated 10-12-1996 under which the claim made by the petitioner for rectification of the anomaly in pay was rejected on the ground that the request made by the petitioner is belated by seven months seven days.

2. According to the petitioner, he was appointed as Junior Assistant (Purchase) in the year 1979 along with two others by name V.A Reddy and C.V.Subba Reddy. The petitioner, being senior among the three, was promoted as Senior Assistant (Purchase) on 8-1-1990; V.A.Reddy is still continuing as a Junior Assistant, while Subba Reddy was promoted as Senior Assistant (Purchase) in January 1995. The petitioner being the senior was promoted much earlier to the above two other persons. But his scale of pay was fixed lower than what is being drawn by the other two - one is still continuing as Junior Assistant and the other was promoted as Senior Assistant five years later than the petitioner. The petitioner, therefore, made a representation for rectification of the anomaly in pay and for proper fixation of pay. The said claim of the petitioner is rejected on the ground that it was belated. The learned counsel for the petitioner contended that though circulars were issued in the year 1990 to make appropriate applications for rectification of the anomaly, the petitioner could know the anomaly much later as V.A.Reddy was given the special grade in the year 1992, while Subba Reddy was promoted in the year 1995, and his pay was fixed in the cadre of Senior Assistant. Therefore, the petitioner could not make the application as contemplated in the circulars referred to which were issued in the year 1990.

3. The learned counsel for the petitioner contended that as the juniors are drawing higher scales than the petitioner, the petitioner's pay

has to be properly fixed so as to rectify the defect in fixing the scale of pay of the petitioner at the appropriate level.

4. A counter has been filed on behalf of the respondents. In the counter it is admitted that the petitioner is senior to the other two candidates in the cadre of Junior Assistant and the petitioner was also promoted as Senior Assistant (Purchase) on 8-1-1990 while the other two were continuing as Junior Assistants. In the counter, however, it is stated that there was a settlement between the management and the Union in terms of Section 12 (3) of the Industrial Disputes Act and as per the said settlement, stagnation increment was proposed for those who could not get any promotion in a period of 12 years. In the process, V.A Reddy was given special grade increment after completion of 12 years period in the cadre of Junior Assistant (Purchase) and accordingly his pay was fixed at Rs.1770/- while the petitioner's scale was fixed at Rs.1635/- on his promotion as Senior Assistant. It is also stated that as per Regulation 9 (1) of the Regulations, the employee was given an option on promotion as to the date of his next annual increment either from the date of promotion or from the date of his next annual increment. The said option has to be exercised within a period of one month from the date of assuming higher post. The petitioner did not exercise the said option on or before 31-3-90 which was the period fixed as per the circular dated 9-3-1990. It is further stated that Subba reddy, who has also got the benefit of special grade increment, was promoted to the post of Senior Assistant in the year 1995 and his pay was fixed at Rs.3300/- while the petitioner was drawing a pay of Rs.3150/- as on 1-1-1995. It is further stated that the Corporation issued another circular dated 6-10-1990 to step up the pay of senior employees who were promoted directly without being placed in the special grade and junior employees who got the special grade in the lower post and later promoted to the next higher post. Even against the said circular the petitioner did not make his

application within the stipulated time, but submitted with delay of 7 months 7 days, and, therefore his claim was rejected. As the petitioner lost his chance of rectification of the anomaly, he cannot plead for any relief now.

5. Heard both sides and considered the material on record.

6. Admittedly, the petitioner is senior to the other two employees mentioned earlier in the cadre of Junior Assistant. It is also an admitted fact that the petitioner was promoted on 8-1-1990 much before the other two juniors. But, however, the said two juniors had the benefit of special grade increment by virtue of completion of 12 years in the post of Junior Assistant and one of them later promoted in the year 1995 to the post of Senior Assistant. The scale including the special grade increment given to the junior i.e.,V.A. Reddy resulted in fixing his pay at higher scale than that of petitioner though the petitioner was promoted and holding higher post. Similarly, the pay of Subba Reddy, who was subsequently promoted in the year 1995 as Senior Assistant, was fixed much higher than that of the petitioner who was promoted five years earlier to him. When such anomaly was known to the Corporation, it is under obligation to rectify the same. The petitioner when came to know of the said anomaly made a representation to the respondents, who instead of rectifying the said defect by giving the petitioner the appropriate scale of pay, rejected the same on the ground that it is belated by seven months seven days. In fact, a perusal of the circular dated 6-10-1990 shows that the options have to be made before 30th November, 1990. When Subba Reddy was promoted in the year 1995, it is impossible for the petitioner to make an application or a claim for rectification of the anomaly in his pay in the year 1990.

6. Under the above circumstances, the stand taken by the respondent-Corporation is not proper and just. The Corporation having noticed the anomaly of paying lower scale to the seniors and promotees

than the juniors in the promoted posts as well as the persons occupying the lower posts ought to have corrected the same *suo motu,* and contrary to the same the claim of the petitioner was rejected on technical ground of belated application. The said action of the Corporation is clearly illegal apart from discriminatory. A senior cannot be permitted to draw a scale lower than his junior on some technicalities. Therefore, the impugned order is set aside and the Corporation is directed to rectify the anomaly and fix up the pay of the petitioner properly, not below the scale of pay of his juniors VA Reddy and Subba Reddy. The said fixation is directed to be completed within a period of two months from the date of receipt of a copy of this order and if it results any arrears due to the petitioner, the Corporation is further directed to pay the same within a period of six weeks thereafter.

7. The writ petition is, accordingly, disposed of. No costs.

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(S.ANANDA REDDY,J)

14-09-2004
rkk/kvh

To

1 Vice Chairman-cum-Managing Director, A.P.S.R.T.C.,
Musheerabad, Hyderabad.

2 Deputy Chief Personnel Manager, APSRTC.,
Hyderabad Zone, Hydeabad.

3. Two CD copies.